

Study Resolution

Public Defenders, Court-appointed Attorneys, and Commonwealth's Attorneys

Authorized by the Commission on November 7, 2022

WHEREAS, the state is to ensure indigent defendants still receive legal counsel when charged with a criminal offense, and a court determines whether a defendant is indigent by considering a variety of factors including receiving public financial assistance or having funds less than 125 percent of the federal poverty level; and

WHEREAS, the Commonwealth provides legal counsel free of charge to defendants through a network of 28 public defender offices throughout the state and private attorneys who can serve as a court-appointed counsel, and the Virginia Indigent Defense Commission establishes standards of practice for public defenders and court-appointed counsel; and

WHEREAS, providing legal representation to indigent defendants requires an adequate number of public defenders and court-appointed counsel who are in reasonable geographic proximity to legal proceedings, qualified, and appropriately compensated; and

WHEREAS, the Commonwealth seeks to ensure public safety through 120 commonwealth's attorney offices that have a responsibility to appropriately prosecute potential crimes; and

WHEREAS, Senate bills 136, 282, 475 and 640 from the 2022 General Assembly were referred by the Senate Finance and Appropriations Committee to the Joint Legislative Audit and Review Commission for consideration for future study; now therefore be it

RESOLVED by the Joint Legislative Audit and Review Commission that staff be directed to review the adequacy and availability of legal representation for indigent defendants, and commonwealth attorney staffing and compensation. In conducting its study shall staff (i) determine the adequacy of the number and location of public defenders and court-appointed attorneys to provide quality legal counsel to indigent defendants; (ii) determine the adequacy of the number of commonwealth's attorneys to appropriately prosecute crimes; (iii) compare compensation for public defenders, court-appointed attorneys, and commonwealth's attorneys and evaluate the adequacy of their compensation, including its impact on quality of representation; (iv) estimate the state and local fiscal impact of addressing compensation-related issues; (v) determine the need for, feasibility of, and fiscal impact of additional public defender offices; and (vi) evaluate the need for and required additional workload of providing defendants with representation at bail hearings.

JLARC shall make recommendations as necessary and review other issues as warranted.

All agencies of the Commonwealth, including the Virginia Indigent Defense Commission, Executive Secretary of the Supreme Court, Office of the Attorney General, Compensation Board, public defender offices, and commonwealth's attorneys shall provide assistance, information, and data to JLARC for this study, upon request. JLARC staff shall have access to all information in the possession of agencies pursuant to § 30-59 and § 30-69 of the Code of Virginia. No provision of the Code of Virginia shall be interpreted as limiting or restricting the access of JLARC staff to information pursuant to its statutory authority.